

## English Abstract

### Introduction

Rabbi Chaim Hirschensohn (Safed, 1857 – New Jersey, 1935) was one of the most profound and fruitful thinkers and *halachic* authorities of recent generations. He developed a wide reaching theology and world view regarding the meaning of the *Torah* in the modern world both for the individual and the collective. His literary legacy, consisting of works ranging from biblical exegesis, through rabbinic responsa and to theology and philosophy, reveals a deeply learned Jewish sage creatively internalizing into his *Torah* world insights and values arising in the liberal democratic world with which he came to identify. At the heart of his theoretical and interpretive life work stands the character of the Jewish State soon to be re-established. Rabbi Hirschensohn (the "Racha") developed a vision of this State based on interpretation of the Jewish theological, legal and political tradition, utilizing his liberal-democratic values as interpretative tools in the work of revealing and crafting the meanings of *Torah* fitting for the new-old reality in which the Jewish national body politic would live in the Land of Israel.

The Jewish Political Tradition, and the place of democracy in it, has aroused considerable academic interest in the last few decades. In this context the Racha's work is also receiving more and more attention. The studies to date present a picture of the Racha's place in the Jewish world of his time, particularly that of Religious Zionism, and highlight his relationship to various then contemporary cultural and philosophical streams. Although his life work is primarily a tapestry of interpretative movement and effort, seeking to understand and recast textual traditions from the Bible to the modern era, relatively little attention has been paid to the relationship between the Racha's *Torah* world view and its Jewish sources. There is need for in depth analysis of the links and relationships between the different elements of the Racha's understanding of *Torah* and the sources upon which they rest. The study presented here is an attempt to fill this need in one central area of the Racha's work: the anchoring of the principles of liberal democracy in Jewish tradition.

The first category of sources that the present study focuses on is the Racha's writings themselves. The Racha worked in the way of the *posek*, the *halachic* decision maker, responding to questions arising in the life of Jews rather than following a linear or systematic agenda. Thus in researching the Racha one must collect his various statements and positions on any given subject which are scattered throughout his *halachic* decisions, textual commentaries and theological-philosophical discussions. My goal in collecting these has not just been to present his explicit positions relating to the character of the Jewish state, work partially completed by others researching his work, but to reveal the internal logic in the depth and the expanse of his writings, which ties his local decisions and interpretations into a coherent whole. Because the Racha was deeply versed in the sources of *Torah*, I argue that the internal logic underlying his project not only

provides coherency to his own work but also deepens our understanding of the foundations and principles of the *Torah* world in general, and in regard to law and politics in particular.

The second category of sources that the present study focuses on is those that the Racha quotes explicitly. The Racha's positions and claims are always accompanied by proof texts from the Bible and Talmud, from the *rishonim* (early rabbinic sages) and the *achronim* (late rabbinic sages), and I have analyzed the use made of these sources. In most cases I presented my own opinion regarding the extent to which the Racha's interpretation reflects the simple meaning of these sources. When I felt it does not, I sought to understand the assumptions, motives and trends operative in the Racha's choices. Here I paid particular attention to uncovering the larger interpretative moves which underlie the Racha's understandings of *halachic* categories and ideas.

The third category of sources focused on are those that the Racha did not make explicit use of but that in my opinion directly or indirectly impacted upon him or are otherwise important for understanding his work. Ideally, in this context, I would have presented an overview of Jewish thought and *halacha* in regard to whatever subject was being discussed, and positioned the Racha within the whole. On subjects where previous research has provided such a picture I was partially able to do just that. But regarding subjects where no such research is available the attempt to present such an overall picture of Jewish tradition exceeded my abilities. In lieu of that more ambitious approach, I focused on uncovering streams and schools of thought in the *Torah* world which throw light on the Racha's approach. Usually, these have been streams and schools which either support his conclusions or directly oppose them and thus provide stark contrast. In many cases, I compared the Racha to other sages while sometimes presenting a set of ideas or positions that appear among a number of sages as a 'stream' with which the Racha has a particular relationship. In quite a few cases I hazarded claims about ideas, questions or tensions which characterize Jewish tradition as a whole and influenced the Racha's work in particular.

Certain methodological aspects of this project require discussion here. Firstly, the question of "simple meaning" of texts must be addressed. On the one hand, the subject of this research is not the history of the Jewish Political Tradition itself but rather the Racha's interpretation of it. Therefore, I did not attempt to present the history of Jewish thought and law in a critical fashion but rather to analysis the Racha's approach. On the other hand, since I sought to analyze the relationship between the Racha's positions and his sources, I needed to distinguish between the simple meaning of these sources and his interpretations of them. The problem here is that often the fundamental assumptions of critical scholarship today in regard to the simple meaning of these sources, particularly the Bible and *Talmud*, are so different from those of the Racha, and the rabbinic world of culture and value he inhabited, so as to render a critical reconstruction of the sources irrelevant to the Racha's project

Therefore, while I made some use of such critical scholarship in regard to the Bible and *Talmud* when it contributed to the discussion, in general I did not seek the "simple meaning" of these sources. If I sought to discuss the meaning of these sources in contrast to the Racha's interpretation, I usually made reference to other rabbinic interpretations. Alternatively, if I none the less sought to compare the Racha's reading to an "independent" one of my own, I accepted the Racha's rabbinic assumptions. For example, if considering an alternative reading of a biblical text to that of the Racha's, I adopted the Racha's assumption that the biblical text does in fact relate to the *halachic* institution that Rabbinic literature understands it to, even if by modern scholarship such an assumption would be anachronistic. If considering an alternative reading of the *Talmud*, I adopted the Racha's rabbinic assumption, for example, that two different statements require harmonization, even if modern scholarship would suggest they are simply contradictory. These "independent" readings do not necessarily throw light on the ancient sources themselves but they can illuminate the nature and purpose of the Racha in relation to those sources.

The situation changes in regard to the *rishonim* and *achronim*. Here the gap between the Racha's readings and those of modern scholars is far smaller. This is true particularly of the Racha more so than of other sages in his day. The Bible and *Talmud* are of course holy cannon for the Racha and therefore he will never disagree with them. As a result, and in light of the rabbinic assumptions mentioned above, the Racha's interpretation of biblical and *Talmudic* texts may seem to the modern eye more statements of value or normative decisions than attempts to recover their simple meaning. Clearly, this aspect of the Racha's approach reflects the inner logic of the rabbinic world altogether. In contrast, the Racha is quite willing to disagree with *rishonim*, and even more so with *achronim*, when the ancient sources of the law contradict their positions from his perspective. The Racha's willingness to disagree in this regard was not acceptable to all his generation's sages and I discuss some of their criticism. In any case, due to the freedom the Racha felt in regard to the *rishonim* and *achronim*, his readings of their work seem much closer to what moderns would regard as their simple meaning. Therefore, when dealing with *rishonim* and *achronim*, I did try to present the simple meaning of these sources for comparison with the Racha's understanding.

It should be noticed that the result of these methodological necessities and decisions is that in some important ways the Jewish tradition in which I seek to 'frame' the Racha starts only in the beginning of the Middle Ages (with the *rishonim*). While the following pages are filled with Bible and *Talmud*, as are the pages of the Racha's writings, the meanings imputed to these sources primarily reflect the assumptions of the Rabbinic world view as it emerged from the *rishonim* and up to the Racha.

The present study is divided into four parts: autonomy, sovereignty, freedom and citizenship. Each part focuses on one aspect of the Racha's vision of the future Jewish State. While

the materials covered in this study do not touch on all the fundamentals of a liberal democratic world view or all of the relevant subjects in the Racha's writings, they form in my opinion the bases of the Racha's Toraitic-democratic world view, both in terms of the Jewish Political Tradition and in terms of liberal democratic thought.

### **Part One: Autonomy**

In this section I considered the degree to which the Racha's Jewish State would be characterized by the spirit of 'autonomy' as defined in light of the liberal democratic tradition of the last centuries, particularly in the Anglo-Saxon branch of this tradition. I discussed four aspects of liberal autonomy: human beings' ability to govern themselves, the reality of autonomous self government, the existence of an ideal of such self government, and the existence of a political status affording rights appropriate to people who can and should govern themselves.

I argued that the Racha's vision of the Jewish State incorporates these four aspects of liberal autonomy. First, the citizen in the Racha's state, even though committed to the Law of God, is none the less a self consciously rational agent able to govern herself. Furthermore, the institutions of the Racha's state engender a political reality in which the citizens act as sovereign in determining the nature of the state in accordance with their autonomous judgment. As to the third aspect, the ideal of autonomous self government, there is a difference between the self-understanding suggested by the Racha and that of at least some theoreticians of liberal autonomy. This is so because even while the citizen in the Racha's state is capable of self-rule and rules herself in reality, she none the less understands her abilities, authority and activity as expressions of the power and authority of God who creates all powers and abilities, human and otherwise.

As to the fourth aspect, the citizens also enjoy a political status which affords them the kinds of fundamental rights appropriate for rational agents who can and should govern themselves. In the context of the Racha's concept of autonomy, this political status is expressed in the power of the citizens to legislate according to their independent judgment even in contradiction to the laws of the *Torah*. In the context of the Racha's concept of sovereignty, this status is expressed in that the body of citizens is the exclusive source of the coercive authority of the state. In the context of the Racha's concept of freedom, this status is expressed in a regimen of liberal rights protecting citizens from coercion by the state except when rationally necessary for the wellbeing of the body politic. These rights specifically protect citizens from the use of force in pursuing the special religious or mystical goals the *Torah*. In the context of the Racha's concept of citizenship, this status is expressed in the equality of all citizens regardless of their identity as men or women, non-Jew or Jew, secular or religious.

The Racha's concept of autonomy begins with the idea that the *Torah* as a whole seeks the wellbeing of human beings as understood in rational, naturalistic and to a certain extent even

utilitarian terms. This is particularly the case regarding the political and moral subjects in *Torah* life. The *Torah*, it is true, is not limited to the wellbeing of human beings understood in this way, for it also includes divine religious and mystical meanings incomprehensible in rational and naturalistic terms. However, pursuing these special meanings never contradicts achieving the rationally understood wellbeing of human beings due to the beneficent character of the Giver of *Torah*. In this context the Racha relies on and reworks, in addition to certain aspects of the Bible and *Talmud*, the medieval Jewish philosophic tradition. His thought primarily reflects that of Maimonides while also clearly influenced by the interpretation of the commandments of Saadia Gaon and Yehudah Ha-Levi.

This emphasis on the rationality of what human wellbeing means, and what the *Torah* aims for in this context, plays two roles in the Racha's thought. The first relates to the relationship between autonomous human activity and the contents of *Torah*. Since the *Torah* itself seeks the rationally understood wellbeing of human beings, it becomes apparent how people are capable of actively participating in discovering and even molding the meaning of the *Torah* in the new circumstances facing each generation. God bestowed rationality on humanity and thus human beings are able, at least sometimes, to understand what's good for them. Since God's Law seeks that same rational good, people and God are, metaphorically speaking, on the same wave length.

The second role that the emphasis on rationality plays in the Racha's thought is in placing *Torah*, at least in regard to politics, in a universal human context. Since human wellbeing is rational and naturalistic, the Racha understands all enlightened states and constitutions, each one in the context of its particular culture, as expressions of the universal human attempt to achieve the good life. The Racha calls the universal rational backdrop to each people's struggle for the good life "natural law". I examine in considerable detail the Racha's understanding of this concept and its sources in Jewish tradition with particular attention paid to the relationship between Jewish conceptions of natural law and the concepts *dina demalchuta dina* (the law of the king is the law), *mitsvat dinim* (the Noachide commandment to establish legal systems) and *mitsvat Shoftim* (the Israelite commandment to establish a legal system). For the sake of brevity I won't expand on these subjects here. In any case, since the *Torah* seeks to achieve the good life for Israel, it is, in regard to politics, a particular instance of the universally human natural law. Rationality bridges some of the great differences between the *Torah* and the nations' ways of life.

We thus see that the centrality of rationality in the Racha's thought illuminates the relationship between the human and the divine *Torah* on the micro and the macro levels: the common rationality of Jew and *Torah* explains the role human beings play in determining the meaning of *Torah*, while the common rationality of *Torah* and the enlightened nations of the world

places Israel's *Torah* life in the context of the universal human struggle to achieve that same good life, each people in the light of their own culture.

In addition to the above elements of the Racha's thought, which support a widely rational and universalistic world view, the Racha also established a philosophical and theological infrastructure to justify placing great value on the particular culture and identity of Israel. One aspect of this particularistic emphasis draws from the same philosophical stream of Jewish tradition mentioned above. Here the Racha emphasizes that while natural law is in fact universally human, all concrete attempts to realize it are necessarily specific to the time, place and culture of some human collective. One can hear echoes in this argument of intuitions which in contemporary theory emphasize the poverty of overly individualistic and culturally "neutral" ideas of the good and claim that real human autonomy necessitates concrete cultural context carrying particularistic ideas of the good.

Another aspect of the Racha's thought focusing on the value of the particular involves a theoretical understanding of the movement from the abstract universal to the concrete particular, while the particularistic end constitutes a unique revelation of certain aspects of the universal. This structure is expressed, for instance, in the universal human seeking of the good, which constitutes the abstract universal end. In the abstract, little can be known about either the good itself or the ways of life in which human beings seek it. The particular end is manifest in the actual states and constitutions of the enlightened nations of the world. Each unique people and culture reveals different unique faces of that abstract universal, and it is in these concrete details that much of the actual value lies.

Another area in which this structure is expressed involves divine revelation. The God of the World, *Elohei Olam*, the most universal and abstract aspect of God, reveals a certain unique particular face through the God of Israel, *Elohei Yisrael*, the manner in which God is revealed in the People Israel. This movement from the universal to the particular reflects the influence of the *Kabbalah*, particularly that of the *Zohar* and *Shaarei Orah*, as well as the thought of Rabbi Nachman Krochmal and Rabbi Abraham Kook.

On these foundations the Racha harmoniously identifies both with absolute obedience to God's eternal Law and with the liberal ideal of human autonomy. I argue that the citizen in the Racha's state who embodies the values and principles of the Racha's approach rightly understands herself, even while being fully committed to *Torah*, as an autonomous rational agent. This self-understanding is built upon four elements: 1) the nature of the *Torah*, 2) the *Torah's* source of authority, 3) the nature of the Oral *Torah* and 4) the nature of the Toraitic "political realm". The first element, touched upon briefly above, is the most essential of the four, but also the most abstract and removed from the reality of liberal freedom in the Racha's state. The last element is the most

technical and practical of the four, but also the central justification and location of liberal freedom. For the sake of brevity I will now discuss the fourth element.

The "political realm" of the *Torah* is a concept I introduced to signify the wide area within *Torah* life, as it has unfolded historically and in rabbinic thought, of human legislation aimed at achieving the political wellbeing of the body politic. "Political" here is offered as a translation of the term *medini* as it is used in medieval Jewish sources to include not only the state but also society in general. Such legislation has historically involved all areas of Jewish life, having considerable impact even of subjects of extreme religious significance and sensitivity such as marriage and divorce and *kashrut*. It is generally accepted among *halachic* authorities that many institutions, from kings through sages and community leaders, have the authority to legislate in these areas even in contradiction to the positive content of *Torah* law, both in regard to divine laws (*deoraita*) and rabbinic laws (*derabbanan*), when achieving the political wellbeing of the community necessitates it. The *Torah* commands that the larger political good is accomplished even at the cost of sacrificing specific laws and obligations. The Racha makes clear that in his conception of the Jewish State all legislative and government activity will occur inside this Toraitic political realm.

There is no question that the Racha emphasizes the importance and inner coherence of the Toraitic political realm while also adopting the positions of those authorities who tend to widen its boundaries and deepen its authority. However, in my opinion, the Racha does not stray from the mainstream either of early or late Rabbinic authorities in this regard. We will see that even the Racha's position that the legislative authority of the political realm rests with the people as a whole, and not with any particular stratum of the people such as the sages, rests on firm *halachic* precedent, if perhaps less mainstream than in regard to the existence and character of the political realm itself.

The Toraitic political realm unites two aspects of Jewish tradition according to the Racha and this unity stands at the center of his concept of autonomy. On the one hand, the autonomous activity in the political realm rests directly on the universally human and rational abilities of the citizens of the Racha's Jewish state. The citizen reflects on the best manner in which to achieve that which is necessary and good for the body politic and legislates to that aim even in contradiction to the positive content of Jewish Law. Here we find true 'negative freedom' and liberal autonomy. But at the same time, this human activity fulfils a divine commandment of the *Torah* itself. God **commands** that the People Israel use their gift of rationality to achieve their political wellbeing.

Here we return to the Racha's focus on the value of particularism. The Racha understands the autonomous activity of the Toraitic political realm not as a sad compromise between the ideal contents of *Torah* and the reality of politics but rather as a central avenue through which the holiness of Israel emerges. It is specifically the rebirth of the Toraitic political realm, made possible

by the massive return to Zion, which will renew the *smicha* (the highest and most ancient form of *Torah* authority) and reveal the presence of the *Shechinah* (the immanent presence of God) throughout Jewish national life. In this context the Racha relies, in addition to the sources quoted above regarding the importance of particularism, on R. Yehuda Halevi's idea of the *Inyan Eloki* (divine principle) and upon the theology of the *Hibbat Tsion* movement.

The Racha presents the People of Israel living according to the *Torah* of Israel in the Land of Israel not simply as a community of those faithful to the commandments, but as a unique entity whose holiness permeates the totality of its existence as a nation of priests and a holy people. In this context the Racha enlists one of most radical expressions of Jewish mystical tradition specifically to sanctify the rational and autonomous human activity of the political realm where it functions independently of, and even in contradiction to, positive Jewish Law: "Here [in the Toraitic political realm] there is no real contradiction, because the legislation which contradicts the *Torah* is itself according to the *Torah*, for the agreement of Israel is *Torah*, for God and *Torah* and Israel are One." The Racha directs the center of the mystical religious meanings arising from the elements of his thought based in the *Kabbalah* and Yehudah Halevi specifically to that realm of *Torah* activity where human autonomy and divine command unite in the uniquely Jewish face of the universally human search for the good life. I called this movement in the Racha's thought "the sanctification of the Toraitic political realm". In this context I paid particular attention to how the Racha applies these ideas to developments in the life of the *Yishuv* in the Land of Israel in his time.

Thus the Racha anchors his concept of liberal autonomy deep inside the *Torah* world not only in regard to the sources of *halacha* but also in regard to the religious ideals and values of the faithful of Israel. The citizen of the Racha's state regards herself as commanded by God to keep the *Torah* in daily life and to fully utilize her autonomous rational abilities in seeking the Jewish body politic's wellbeing. The activity in the political realm, which bridges the unique particular contents of Israel's *Torah* and the universally human rational natural law, takes its place among the other disciplines of *Torah* life and like them is infused with holiness and the presence of God. The Racha holds that the tremendous religious significance of this activity emerges only in the context of a living Jewish body politic in the Land of Israel. And thus the spiritual and religious force in the Racha's Toraitic concept of liberal autonomy becomes a source feeding the great yearning felt throughout his writings for the resurrection of Jewish national life in the Land of Israel.

## **Part Two: Sovereignty**

In this section I discussed the Racha's concept of legitimate political authority, that is, the authority to legitimately use the coercive power of the state. To a certain extent that such authority is possible only in the framework of some sort of social contract embodying the relevant population's agreement arises necessarily from the Racha's concept of autonomy described above. If



the Racha holds that people are capable of autonomy, that autonomy is an ideal and is committed to establishing state institutions and civil status making autonomous self-government a reality, clearly some sort of consent theory will be necessary for legitimate political authority.

Thus in this section we are dealing with a theory of legitimate political authority. I chose to present these aspects of the Racha's thought as a concept of "sovereignty" due to the nature of his interpretative project. The Racha doesn't begin in a vacuum, as it were, asking what legitimate authority looks like and how it may be established. Rather, he inhabits the inherited world of Jewish tradition. In this context it is clear that there exists political authority like that wielded by kings and prophets, sages and community leaders for the last three thousand years. Furthermore, it is clear that the Jewish State will wield such power once established. The question for the Racha, then, is from whence does this authority arise and what implications does that origin have? The Racha answers clearly: the people as a whole are the source of all political authority and they will be sovereign in the Jewish State.

One central source for the Racha in this context is the biblical narrative of the covenant. In spite of the great wealth of different meanings the covenant carries in the ancient near east, in the world of the rabbis and in Western political thought, clearly certain aspects of this idea, and certain streams of its interpretation, provide powerful support for the Racha's idea of legitimate political authority. Of course, there are also other aspects and streams of interpretation. In any case, the biblical covenant as a model of the establishment of legitimate political authority, what the Racha calls *brit ha-am* (the covenant of the people), expresses in the Racha's writings the kernel of his position that legitimate political authority is possible only as an expression of the free consent of those subject to that authority.

It is important to emphasize that this concept of political authority does not preclude the recognition of other kinds of authority. Clearly, God has some authority. Also, the sages have authority to interpret the *Torah* in each generation. The Racha also clearly believes that concepts like the good and the true are not dependent on the will of any majority, and thus each individual has the right, and the obligation, to stand behind her ideas in spite of common opinion. However, these kinds of authority cannot justify the use of coercive power by human beings against human beings except through the consent of those same human beings. Surely, we can question this position even in the context of liberal democratic thought. Is there no situation where the use of coercive force is justified without legitimate government based on consent? Most likely there are such situations. None the less, it is clear that a fundamental intuition of democratic thought is that such situations are rare, or at least should not be understood as the norm, and that all legitimate coercive force must rely on at least some kind of tacit consent.

I divided the Racha's approach to anchoring these ideas in Jewish tradition into two segments. The first involves presenting textual support for the idea that the *Torah* recognizes the public, regardless of the prophecy of prophets or the wisdom of sages, as a source of political authority. The second segment involves presenting support for the idea that the *Torah* regards the public, and only the public, as the ultimate source of all legitimate political authority. Other groups such as the sages, or institutions such as the rabbinic courts, may enjoy other kinds of authority, but if they are to wield political authority, that is the power to coerce, they must have been granted that authority by the public.

The Racha utilizes the concept of *brit ha-am* to interpret a series of biblical covenants so that these covenants are understood to assume his concept of democratic sovereignty. Here his readings seem both highly independent and largely unprecedented. The Racha then utilizes this biblical support for his concept of democratic sovereignty in support of a *halachic* analysis of the authority of the *kahal* (the framework of Jewish communal self government from the tenth century through emancipation in the modern era), the authority of the rabbinic court and the essence of *semicha* (supreme ancient rabbinic authority). These concepts, the *kahal*, the court and *semicha*, begin in the *Talmud* but grow to their full depth and complexity only in the *rishonim* and *achronim*. It seems, at least at first, that the Racha interprets these late sources in light of the democratic ideals he finds in the biblical *brit ha-am*. The Racha concludes, of course, that these later sources correspond with biblical principles: political authority rests only in the consent of the people.

However, when following the Racha's interpretative path something seems odd, as I'll demonstrate in regard to the *kahal*. The Racha presents a completely independent *halachic* analysis of this institution, that is, in spite of his use the biblical *brit ha-am* to explain the source of political authority in the *kahal*, he none the less dives into the *Talmudic* and later rabbinic authorities. While there are of course sages and sources which lean away from his purposes, he convincingly interprets, in my opinion, a series of central sages including R. Yonah of Gerondi, R. Shlomi Yitschaki, R. Shlomo ibn Aderet and R. Eliyahu Mizrachi. These sages argue that the authority of the *kahal* arises from the public as public, and not from the wisdom of sages, the wealth of the wealthy and so forth. In these interpretations the Racha reaches similar conclusions to that of a younger sage of his generation: R. Uziel.

But if in fact the authority of the *kahal* simply reflects the biblical *brit ha-am* (which certainly, as law from the *Torah*, would seem to trump any later source), why does the Racha go on to argue his case from these later sources as if no one had ever heard of *brit ha-am*? In the structure of the Racha's argument, the concept of *brit ha-am* acts as textual support for his understanding of the authority of the *kahal*, but one suspects that it his concept of *brit ha-am* which requires support,

while his interpretation of the *kahal* seems well anchored in *halachic* literature. Why this backward path?

I think the logic of the Racha's path becomes apparent if one reverses the order of his discourse. *Brit ha-am* is not the textual support for the Racha's interpretation of the *kahal*, as it seems at first, but rather the opposite is the case: the Racha utilizes his in depth and detailed analysis of the *halachic* sources of the *kahal's* authority to anchor a central idea of his concept of *brit ha-am*, that the public as public is a source of political authority. The Racha follows a similar path in regard to the second central idea of *brit ha-am*, that the public, and only the public, carries such authority. The Racha provides support for this idea through an analysis of the *halachic* discourse surrounding the authority of the rabbinic court and the concept of *semicha*. Here too, it looks as if the concept *brit ha-am* is brought as textual support, but in fact I think it is the opposite: the Racha's *halachic* analysis of later sources is the support for *brit ha-am*.

If so, then the concept of *brit ha-am* is a name that the Racha suggested for a family of *halachic* conclusions and meta-*halachic* principles that he gathered through his detailed analysis of the *Talmud*, *rishonim* and *achronim* vis-à-vis the *kahal*, rabbinic court, and *semicha*. Once this family of conclusions and principles is organized through *brit ha-am*, this concept then serves the Racha as an interpretative tool in uncovering the *halachic* meanings of the biblical covenants. These covenants, newly explicated through the prism of *brit ha-am*, then throw new light on that same *halachic* discourse regarding the *kahal*, rabbinic court and *semicha*. Thus we find that the meanings of the covenants of the bible were illuminated in the light of later rabbinic tradition, and that later tradition itself was illuminated in the light reflected back from the biblical covenants. Behind this process lies the inner logic of the rabbinic tradition of textual interpretation, weaving the sources of Jewish tradition into an inter-textual a-historical coherent whole of value, meaning and law. The Racha's interpretative path represents the internalization of the rabbinic method's creative power, and a focusing of that power on forging recognition within the world of *Torah* for the truth and value he identifies in liberal democratic principles.

I argue further in this section that the Racha's understanding of the above mentioned institutions is supported by both the actual functioning and Rabbinic justification of many, but not all, Jewish *Kehilot* (historical instances of the *kahal*). Further, his concepts of the authority of the rabbinic court and of the *semicha* are firmly grounded in the writings of Maimonides. However, the Racha goes further than any of these sources in demanding that in the modern Jewish State, political authority will be granted only through general elections as practiced in Western democratic states. Here the Racha expressly states that such a practice would be at least partially new but that the *Torah* in fact commands that the Jewish form of government progress with the times. This claim is drawn from a stream of Jewish thought and interpretation which I argue begins in the bible itself,

but is in any case prominent in the writings of a number of sages who influenced the Racha in particular, including R. Naftali Tsevi Berlin and a number of Religious Zionists in the Racha's own generation. Some of these thinkers concluded, like the Racha, that only democratic elections would suffice for the modern Jewish State.

### **Part Three: Freedom**

Liberalism is founded on the idea that liberty as a foundational value is a priori, that is, coercion, not liberty, requires justification. One might add following the Racha that the justification for such coercion must be both rational and tied to the political well being of the community, when "political" is understood in its wide medieval sense. The Racha shares Spinoza's and Mendelssohn's position that the use of coercive force in the service of any aim which does not rationally serve political wellbeing is both destructive and illegitimate.

One will immediately notice that a great portion of *Torah* life, both in regard to belief and commanded action, can therefore not serve as the legitimate aim of political authority. This liberal ideal seems opposed to the reality of Jewish life throughout the generations in which such authority was in fact employed in the enforcement of Jewish belief and practice, seemingly without any rationally justifiable relation to political wellbeing.

In understanding the Racha's position, it must be clear that his liberalism does not assume that the value of the beliefs and practices of *Torah* life is dependent on the individual's subjective perception. The *Torah* is divine, absolute and objectively true. Furthermore, it is a distinct possibility that violating the *Torah*, regardless of the subjective understanding of the Jew, will wreak havoc on Israel, humanity and even upon all creation. If so, why should political authority not be used to enforce its precepts?

The Racha's position begins with his claim that human beings do not freely choose their beliefs. Only true inner conviction enables actual belief. Any attempt to coerce belief will inevitably fail: If one succumbs to such coercion without true belief, then the coercion has produced only flattery and deceit; Alternatively, if one truly succumbs, so that one accepts the coerced beliefs as one's own, then the Racha argues this means that one's independent mind has been so corrupted that no authentic belief of any kind is possible. Such destruction, in addition to being immoral violence, has dire consequences: only one of sound and independent mind can act as a link in the chain of Jewish tradition, particularly in regard to the Toraitic political realm. Thus crushing the independent minds of Jews represents a dangerous blow to *Torah* life and tradition.

The Racha argues that his position is expressed in Jewish *halachic* discourse in that the *Torah* never commands faith or belief of any kind, but rather only actions. He specifically invokes and develops the ideas of R. Isaac Abrabanel and Hasdai ben Abraham Crescas in their commentary to Maimonides' Book of Commandments. I argue that there are in fact important currents in Jewish

thought and law which support the Racha's claims and that in particular his reading of these two sages is convincing.

Freedom of belief is relatively easy to anchor in Jewish tradition, but freedom of action, the freedom to violate the commandments of the Torah, is a much more serious challenge. Here the Racha presents an addition to his above argument: while human beings do not freely choose their beliefs, these none the less inevitably influence action. Human beings are creatures that will not refrain from doing that which strikes them as valuable nor perform acts they consider meaningless, regardless of the weight of religion and tradition. Thus, one who honestly does not accept God or Revelation cannot be expected to keep His commandments. While not explicit, I argue that the Racha expresses in these arguments an intuition about the necessarily rational nature of legitimate justification for the use of force. Prophets, sages and mystics know with absolute certainty that violating the *Torah* is evil for humans and the world. But not all humans were blessed with the special faculties necessary to be such people. In order to justify coercion, one must be able to expect reasonably that the person coerced can understand the value of the act being forced upon her. This is only possible if that value is accessible to any sound human mind, that is, it must be rationally related to some universally recognized good. Such rational and universally recognized goods are the stuff of political wellbeing, what the Racha calls natural law, and thus legitimate coercion must always be justifiable by reference to a rational attempt to implement natural law.

The Racha anchors these principles *halachically* through an extensive analysis of the concept of duress in the *Talmud* and later *halacha*. It is an accepted *Talmudic* principle that one who violates a commandment under duress is exempt from punishment. Already in the *Talmud* this idea is tentatively applied to duress arising from beliefs or states of mind, and this application is greatly developed by later authorities, particular Maimonides, in the context of dealing with heretics and apostates of various kinds. The Racha follows Maimonides and continues down the path of later and more radical applications of this idea, such as that of R. Jacob Etlinger and, later still, Religious Zionist sages of his generation. The Racha's approach closely resembles that of R. Abraham Karelitz which, while hardly less radical than that of the Racha, was to become widely accepted in subsequent generations. While there is a tremendous amount of detail involved in addressing the myriad institutions and methods of coercion operative in Jewish tradition, materials which I discuss at length in this section, the bottom line of this stream of thought and *halachic* interpretation is that Jews in the modern era are effectively exempt from punishment for the violation of religious law. This is so according to that law itself, and so certainly the power of the state is not to be wielded against them. Such power is only to be used, the Racha makes clear, in support of the laws legislated by the democratically elected parliament for the wellbeing of the people. Such legislation,

it should be remembered, occurs in the framework of the Toraitic political realm discussed in Part One above.

The Racha utilizes the above described school of interpretation and *halachic* decision-making not only to secure the liberal freedom of non-*halachic* Jews, but also to express the value of liberal freedom in *Torah* life. While not necessary, it is certainly reasonable to interpret the defacto elimination of religious coercion not as a sad compromise with modern realities but as a principled expression of value and commitment. Thus the well supported *halachic* position that violators of religious law are not to be persecuted becomes an embodiment of the value of freedom in *Torah* life.

If so, however, why was force used in the Jewish past in ways seemingly unjustifiable according to these principles? Here the Racha utilizes two ideas, the first in common with many Jewish thinkers, perhaps most famously with Maimonides and R. Abraham Kook, and the second a common assumption in Rabbinic thought. The first is progress. Force was used in the past in ways necessitated by the deeply political significance of purely religious values and actions in the past. This was not good, but it was the way it was. Second is the rabbinic logic of casting the past as an expression of Judaism's ideals in the present. Unless some particular reason is apparent, it is always assumed that the great Jewish communities of the past followed the *Torah*, as understood by the rabbis of later generations, and did not violate it. Thus according to the *Talmud* King David regularly consulted the *Sanhedrin*, or great rabbinic court, while historically no such institution could have existed at that time. It follows, therefore, that if according to *halacha* as the Racha interprets it, coercive force may only be used in accordance with the principles described above, then there is every reason to believe that ancient Jews understood and respected those principles. If they acted, none the less, in seeming contradiction to those principles, it was not because they held some world view contradictory to that of the *halacha*, but because of certain unfortunate conditions in the past which later progress has ameliorated. Here, as in regard to sovereignty above, the Racha's approach represents the internalization of the world view and creative power of the rabbinic method and its use in favor of liberal democratic values.

Finally, central to the Racha's concept of liberal freedom is the impossibility of rebuilding the temple and sacrificial alters on the Temple Mount in Jerusalem. If these were to be rebuilt a whole serious of punishments ranging from flogging to execution for many ritual offences would become incumbent upon Jews according to *halacha*. The Racha's choice not to seek the temple's rebuilding, in spite of his radical position in favor of renewing the ancient *semicha* (which I discuss at length but not in this abstract), marks in some sense the limits of his interpretative project. While it would not be impossible it would certainly be difficult to interpret and justify the punishments which come into force with the renewing of the sacrificial cult in light of liberal democratic values.

In another sense, though, the Racha transforms even this limit into strength. He argues, following the generally accepted *halachic* sources in this regard, that it is impossible to reinstitute the sacrifices without some kind of supernatural divine guidance. Further, he argues, the sacrifices and to a large extent the areas of Jewish law dependent upon them, such as the punishments mentioned above, are incomprehensible in our day and will be illuminated only with the renewal of prophecy. If so, then the impossibility of rebuilding the temple without divine guidance is further proof of the relevance of the *Torah* to every place and time. We cannot, here and now, understand the meaning and purpose of the sacrifices and biblical punishments. It is appropriate, therefore, that the enactment of these areas of *halacha* is only possible in circumstances, ie. the renewal of explicit communication between God and Israel, that would also render our understanding possible. Until then, *Torah* life will function according to the principles of *halacha* as expounded by the Racha.

#### **Part Four: Citizenship**

I suggested above that the Racha's concept of democratic sovereignty in some important ways arises necessarily from his concept of liberal autonomy. Here I'd like to argue that one take on his concept of democratic citizenship is that it arises necessarily from his concepts of autonomy and of sovereignty. The establishment of *brit ha-am* means that free individuals bind their strength together to form a body politic whose elected government wields political authority. It's clear that without special considerations, all the members of *brit ha-am* share equal parts in that political authority for it is, in fact, their collective power and authority itself. At least in principle it seems that no one could be subject to legitimate political authority and not be a partner in it, for one establishes the *brit am*, is a member of it and is answerable to authority it creates all in one motion. This is particularly so for the Racha who made it clear that in Israel's *brit am* there is no special class wielding political authority but rather all such authority remains with the people as a whole.

None the less, one could imagine certain populations who, in spite of the principles above, would be subject to the Jewish State's political authority but not privy to partnership in it. One such population might be those who violate Jewish law and thus stand outside the norm, that is, secular or otherwise non-*halachic* Jews. Another such population might be women, based on the idea that their role in the covenant is fulfilled by their fathers and husbands. Lastly, one might think that non-Jews would be subject to the state's authority but not partners in it due to their outsider status. Certainly, there is no shortage of authoritative Jewish sources to buttress exclusive claims such as these and these claims were made also in the Racha's day.

In this context the Racha's work is clear. If he is to forge a Toraitic democratic concept of citizenship, he must argue why Jews who violate Jewish law are none the less legitimate members of the Jewish polity. He must argue that women are not addendums to their male relatives but rather full partners in *brit ha-am*, playing an equal role in government and law by right. And he must

argue that non-Jews, even while not members of Jewish religion, are in fact equal citizens in the Jewish state or even partners in *brit ha-am*. Making each of these arguments requires addressing the myriad sources of *halacha* involved with the many different aspects of these questions. The Racha does in fact make these arguments and I analyze his arguments and interpretations in considerable detail. In the interest of brevity, however, I will now focus on the Racha's fundamental conception of democratic citizenship, a conception at work in one way or another in his analysis of the distinct and complex *halachic* status of all three of the above populations.

Above I discussed how the Racha's democratic concept of citizenship arises from his concepts of autonomy and sovereignty. Here I argue that underlying the Racha's thinking is another less explicit, but central, conceptual structure which is based on the relationship between his concept of autonomy and his concept of liberal freedom. This element is the bringing to light of a Toraitic civil status parallel to the Toraitic political realm.

We saw in the part on autonomy that the Toraitic political realm represents the meeting place between natural law and the unique *Torah* of Israel. Here human beings autonomously seek their political well being, commanded by God to make good independent use of their God given rational faculties. We pointed out that here the 'negative freedom' of liberal autonomy matches the essence and purpose of this aspect of *Torah* life for here one can understand the purposes and meanings of the *Torah*, rational political wellbeing, without need of special religious knowledge and ability. We saw in the part on liberal freedom that political authority, the legitimate use of force, in the Jewish State is only possible in relation to the universally human and rational goals of the political realm. While its true that even the mystical and religious meanings of the *Torah* are objectively good and true, the goodness and truth of these meanings is only apparent to those, like the prophets, mystics and great sages, blessed with special abilities and knowledge. In contrast, the goodness and truth of the Toraitic political realm is by definition comprehensible to any human being of sound mind. The religious lack of non-*halachic* Jews and the religious difference of non-Jews may prevent them from entering some realms of *Torah* life, but certainly they and all citizens of the Jewish State share the basic humanity which produces the needs and abilities at stake in the *Toraitic* political realm.

True, the universal seeking of the good life as manifest in the Jewish State will not be culturally neutral but will reflect the particularity of Jewish national life. But natural law is only culturally neutral in abstraction, as we saw in the first section. Actual human attempts to realize the good life are always culturally particularistic. The particularism of the Jewish State will reflect universal natural law as revealed in the particular reality of its circumstances, and party to those circumstances will be all citizens of the state. Of course, even in liberal democratic states there are tensions between different populations reflecting differing cultures and world views. Never are such



populations equal in their power, numbers or impact on the government and law of the land. However, these universal problems of democratic theory are not peculiar to the Racha's Jewish State. Any democratic concept of citizenship will need to define the core of civil equality afforded every citizen regardless of other differences and inequalities. For the Racha, this core is equal partnership in the political authority of the state as afforded by full participation in democratic elections and in the institutions of government and law, in addition to the liberal freedoms established by the principled limitations the Racha imposes upon any use of coercive force. The Jewish State may use its political authority only in favor of goals rationally serving the well being of its citizenry.

One contemporary theory of legitimate political authority posits the need for "converging agreement" of the various populations subject to that authority. The idea here is that due to the great differences of culture and value dividing populations, for example, religious Jews, secular Jews and non-Jews, one can seek agreement as to the nature of political authority but not as to its larger meaning and context. For instance, both the Racha and a secular Jewish nationalist like Theodore Herzl may agree about the need for liberal democratic political authority, but it likely that they will never agree whether such authority reflects the *Toraitic* political realm or the fruits of European enlightenment. While the Racha's carving of the civil status and the political realm out of the stuff of *Torah* life does not represent a compromise with the cultures of the non-*Torah* world, for it is his understanding of *Torah* itself, it does open a wide channel of communication and mutual understanding with them. The Racha holds that the *Torah* requires that political authority be guided by autonomous rational human judgment and limited to those goods and needs shared by all human beings of sound mind. These are never objective, nor culturally neutral, but as discussed above, their particularity is in fundamental ways common to all citizens of the Jewish state. Thus, while the Racha anchors the nature of political life in the Jewish State deep inside his world of *Torah* and *halacha*, the nature of that life as he understands it allows for populations of very different cultures and values to embrace such a political life while understanding its larger meaning and context in their own terms.

## **Epilogue**

Rabbi Chaim Herschensohn was one of the most fruitful and profound Rabbinic sages of the modern era. He combines the deeply learned *posek* (*halachic* judge), well versed in the disciples of *Torah*, with the thinker and theologian nurtured by the unfolding self-understanding of Jewish civilization throughout the generations. The Racha dedicated his life to diving into the depth of meanings of the *Torah's* sources from past generations to discover, in light of the good and the true as he understood them, the meanings they hold for his generation. Two of his most fundamental insights in this regard have formed the focus of this study. The first is democratic, and its heart is

that the time for democratic self government has come. The second is liberal, and its heart is that protecting the freedom of human beings in their thoughts and in their actions requires careful and principled limitation of force against them. Both of these insights reflect the rational powers of human beings as granted by The One Who is the source of all wisdom.

The Racha's literary legacy is a tremendous interpretative project at the center of which stands the democratization of the Jewish Political Tradition. His many works reveal before us a *Toraitic* and political world view corresponding to the man who created it. From one side, the Racha's approach expresses deeply and consistently the fundamental insights of the liberal democratic world of thought and values. From the other side, the Racha's interpretation of the sources of Jewish thought and law, and his understanding of the inner logic of the written and oral *Torah*, touch the roots of the *Torah* world while highlighting those foundations and currents which, when woven together, provide convincing support for his conclusions. In addition, the Racha's writings bear witness to a man who profoundly lived a deep *Torah* life infused with religious and emotional force and passion. In addition to its many other merits, the Racha's *Toraitic*-democratic synthesis is the most profound and far reaching, and thus the most important, such effort to arise in Jewish history until our day.

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